

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

§

§

V.

§

CRIMINAL NO. H-05-324

§

RENE GARCES

§

ORDER OF DETENTION PENDING TRIAL

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts are established by a preponderance of the evidence or clear and convincing evidence and require the detention of the above-named defendant pending trial in this case.

Findings of Fact

☐ A. Findings of Fact [18 U.S.C. § 3142(e), § 3142(f)(1)].

☐ (1) The defendant has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4).

☐ an offense for which the maximum sentence is life imprisonment or death.

☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. () § 801 et seq. () § 951 et seq. () § 955(a).

☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1) (A)-(C), or comparable state or local offenses.

☐ (2) The offense described in finding 1 was committed while the defendant was on release pending trial for a federal, state or local offense.

☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding 1.

☐ (4) Findings Nos. 1, 2, and 3 establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community. I further find that the defendant has not rebutted this presumption.

☒ B. Findings of Fact [18 U.S.C. § 3142(e)]

- [X] (1) There is probable cause to believe that the defendant has committed an offense
- [X] for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. (X) § 801 et seq. () § 951 et seq. () § 955(a).
- [] under 18 U.S.C. § 924(c).
- [X] (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.
- [X] C. Findings of Fact [18 U.S.C. § 3142(f)(2)]
- [X] (1) Defendant is accused of drug trafficking crimes including conspiracy and possession with intent to distribute 5 kilograms or more of cocaine, a Schedule II controlled substance.
- [X] (2) There is a serious risk that the defendant will flee.
- [X] (3) Defendant represents a danger to the community.
- [] (4) There is a serious risk that the defendant will (obstruct or attempt to obstruct justice) (threaten, injure, or intimidate a prospective witness or juror, or attempt to do so).
- [X] D. Findings of Fact [18 U.S.C. § 3142(c)]
- [] (1) As a condition of release of the defendant, bond was set as follows:
- [] (2)
- [X] (3) I find that there is no condition or combination of conditions set forth in 18 U.S.C. § 3142(c) which will reasonably assure the appearance of the defendant as required.
- [] (4)
- [X] (5) I find that there is no condition or combination of conditions set forth in 18 U.S.C. § 3142(c) which will reasonably assure the safety of any other person or the community.

Written Statement of Reasons for Detention

I find that the accusations in the indictment, the information submitted in the Pretrial Services Agency report, and the evidence at the hearing establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and by clear and convincing evidence that no conditions will assure the safety of the community.

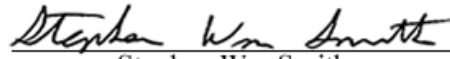
I conclude that the following factors specified in 18 U.S.C. § 3142(g) are present and are to be taken into account:

1. Defendant Rene Garces is a 39 year old United States citizen born in Edinburg, Texas, where he has lived all his life. Garces has been unemployed for 5 years. He admits to using marijuana daily.
2. Garces has four children from two prior marriages and three children with his common law wife, Melissa Martinez. However, he has no stable living arrangements and Martinez cannot confirm where Garces resides.
3. Garces proffered testimony from Martinez, who would testify that she has three children by Garces ages 9, 7 and 2. The youngest child is seriously ill, and requires frequent and extensive medical attention. Martinez would testify that she relies upon Garces to relay information from the doctor about the child, because she cannot bear the emotional strain of dealing directly with the doctor. This evidence is undermined by her admission to Pretrial Services that Garces does not live with her and that she does not know where he resides.
4. Garces is charged in several counts of drug trafficking, including conspiracy and possession with intent to distribute 5 kilograms or more of cocaine, a Schedule II controlled substance. The potential penalty range includes life imprisonment.
5. The evidence against Garces, including evidence obtained by numerous wire taps and surveillance conducted by DEA agents, is substantial and indicates a significant role in the drug trafficking crimes charged.
6. Garces has several prior conviction for driving without a license, a conviction for possession of marijuana, and a conviction for delivery of marijuana.
7. Garces has not rebutted the statutory presumption that he is a flight risk and a danger to the community.
8. There is no condition or combination of conditions of release which would assure the appearance of the defendant in court or the safety of the community. Detention is ordered.

Directions Regarding Detention

It is therefore ORDERED that the defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with all court proceedings.

Signed at Houston, Texas, on September 9, 2005.


Stephen Wm Smith
United States Magistrate Judge